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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 In Re: Terrorist Attacks on  
4 September 11, 2001

03 MD 1570 (GBD) (SN)

5 Oral Argument

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6 New York, N.Y.  
7 January 18, 2017  
8 11:39 a.m.

9 Before:

10 HON. SARAH NETBURN,

11 Magistrate Judge

12 APPEARANCES

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(Case called)

THE DEPUTY CLERK: Please state your name for the record.

MR. CARTER: Good morning, your Honor. Sean Carter from Cozen O'Connor on behalf of the plaintiffs.

THE COURT: Good morning.

MR. TARBUTTON: Good morning, your Honor. Scott Tarbutton from Cozen O'Connor on behalf of the plaintiffs.

THE COURT: Good morning.

MR. KREINDLER: Good morning, your Honor. James Kreindler from Kreindler & Kreindler.

THE COURT: Good morning.

MR. KRY: Your Honor, Robert Kry with MoloLamken for defendant Dallah Avco.

MR. NITZ: Good morning, your Honor. Eric Nitz, also at MoloLamken, for Dallah Avco.

THE COURT: Thank you.

One housekeeping matter. I am hopefully at the tail end of a terrible cough. Our court reporter unfortunately witnessed when I thought I was done with it last week and I wasn't, so I'm hoping that I don't have a coughing fit on the bench. It has happened in the past. I have water and cough drops here which I may have to take. I apologize, and if it gets really bad, then I'll just step down for a minute and regain my composure.

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1           So we are here on the pending motion to compel. I  
2 will give the plaintiffs an opportunity to begin, and if I can  
3 ask, I know these motions have been pending for some time now,  
4 and so I also wanted to know whether or not there's been any  
5 developments or changes or whether the parties have had further  
6 negotiations or further productions that are worth me knowing  
7 about.

8           MR. CARTER: Your Honor, we have not had any further  
9 conversations since the motion.

10          THE COURT: Okay.

11          MR. KRY: Your Honor, if I can clarify, though, there  
12 were developments during briefing, so there were some issues  
13 raised in the original motion that were addressed.

14          THE COURT: I think I picked up on that in the  
15 briefing.

16          MR. KRY: Thank you.

17          THE COURT: So other than those sort of additional  
18 productions and the like.

19          Okay. So let me begin with Mr. Carter. Are you going  
20 to be taking the lead here?

21          MR. CARTER: I am, your Honor.

22          THE COURT: So why don't you talk to me a little bit  
23 about -- I think it's helpful to focus on documents related to  
24 al-Bayoumi specifically and some of the other areas of  
25 discovery that you're seeking. So with respect to the

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1 documents related to al-Bayoumi personally, the personnel files  
2 and the like, what's your basis for your belief that a full  
3 production hasn't been made at this point?

4 MR. CARTER: Okay. Your Honor, I think in terms of  
5 the personnel files or the files relating to Bayoumi, we begin  
6 our approach to this with a recognition that the circumstances  
7 surrounding the manner in which these documents were handled  
8 during the course of this litigation gives rise to very  
9 legitimate concerns that responsive records weren't properly  
10 preserved and that responsive records could have gone missing  
11 over the course of this litigation. And we're mindful of the  
12 fact that Dallah Avco has indicated itself that the records  
13 related to Bayoumi were effectively placed in a warehouse in or  
14 around 2005, again, while the litigation was pending, while  
15 Dallah Avco was a defendant, and fell into a state of disarray,  
16 that within that warehouse various other parties associated  
17 with the broader Dallah Al-Baraka group had access to the  
18 facility where the records were being stored, and essentially,  
19 again, using it as a dumping ground.

20 THE COURT: Right. And I looked at the pictures and  
21 obviously read all of the documents, and I accept that the  
22 warehouse was a mess. The Yamani declaration details I think  
23 in some significant measure the efforts that were taken to  
24 clean up that mess and the substantial resources and time and  
25 commitment that Dallah Avco undertook to remedy a problem of

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1 its own making. And so based on that, it appears to me that  
2 they have searched through these documents, mulled the relevant  
3 al-Bayoumi documents, and produced those nonprivileged  
4 documents to you. And so I'm curious, though, whether or not  
5 your position that you haven't received everything is sort of  
6 anchored to the fact that the warehouse is a mess or that you  
7 have other reason to believe that there are missing documents.

8 MR. CARTER: Well, your Honor, I think in certain  
9 cases it has to do with the nature of documents that we have  
10 received, which in certain cases come completely out of any  
11 associated context and seem on their face to be disassociated  
12 from other documents that one would naturally expect to be  
13 available and to have existed. And let me give a few examples.  
14 Omar al-Bayoumi appears from the first instance within the  
15 Dallah Avco documents within the period of 1994. And in that  
16 setting the documents reflect that Dallah Avco was essentially  
17 being asked to reimburse educational expenses allegedly being  
18 incurred by Bayoumi, who was allegedly at that time studying on  
19 a scholarship from the Saudi government. So we begin with  
20 Dallah Avco having an apparent awareness that Bayoumi was this  
21 figure who was functioning as a full-time student in the 1994  
22 period. Then suddenly, sort of out of thin air, in May of  
23 1995, the chairman of the board of Dallah Avco writes to the  
24 Saudi Civil Aviation Authority to indicate that Dallah Avco  
25 needs Omar al-Bayoumi to be assigned to Dallah Avco to work as

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1 an auditor on the ANSS project.

2 Now preceding that May 24, 1995 request from Dallah  
3 Avco to the PCA to assign al-Bayoumi or second Bayoumi to  
4 Dallah Avco, there's no indication in the available documents  
5 as to the circumstances through which Bayoumi came to the  
6 attention of Dallah Avco as an appropriate candidate to serve  
7 as an auditor, the circumstances in which Bayoumi's candidacy  
8 as a potential employee on the ANSS project came to the  
9 attention not only of Dallah Avco itself but to the chairman of  
10 the board of directors of Dallah Avco. In addition, Dallah  
11 Avco's own description of its role within this project is that  
12 it never served as any sort of recruitment agent for Bayoumi,  
13 never had any supervisory role over him, but served as a mere  
14 paymaster, and yet we have this isolated document through which  
15 the request for this relationship is coming to the board of  
16 Dallah Avco. On top of all of that --

17 THE COURT: Sorry. The request is coming from?

18 MR. CARTER: The request to initiate this secondment  
19 is coming from the chairman of Dallah Avco, not from the  
20 Presidency of Civil Aviation.

21 In addition to all that, we have the reality that we  
22 see in the other documents that Dallah Avco had an awareness  
23 that Bayoumi was in fact a student at the time. There's no  
24 explanation in any of the documents that would shed light as to  
25 why the chairman felt that Dallah Avco desperately needed to

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1 have an individual who was a full-time student residing in the  
2 United States assigned to a project as an auditor, even though  
3 he wasn't going to work on that project. And so it all comes  
4 completely out of thin air without any contextual documentation  
5 that would show how this possibly could have come on the radar  
6 screen of the chairman of the board.

7 We have a similar circumstance then, your Honor, in  
8 this period of April of 1999. At that point Bayoumi has been  
9 seconded to Dallah Avco for a period of approximately four  
10 years. And again, Dallah Avco's stated position is that it had  
11 no supervisory role, no idea what he was doing, that he was at  
12 all times an employee of the Saudi government, that they didn't  
13 much care what he was doing, that they were a simple paymaster.  
14 And yet for some reason, on April 4, 1999, the chairman of the  
15 board of Dallah Avco again writes personally to a  
16 representative of the Presidency of Civil Aviation to advise  
17 that Dallah Avco does not want to extend the secondment of Omar  
18 Bayoumi any further. And again, this comes without any context  
19 explaining how this possibly could have come to the attention  
20 of the chairman of the board of directors of a major private  
21 company in relation to a project that was at the time worth  
22 something on the order of 400 million rials, which I think  
23 would roughly translate to \$125 million, and relative to which  
24 there was some 1400 employees. And so somehow the status of  
25 this single individual somehow bubbles up to the attention of

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1 the chairman of the board of directors. There's no inquiry  
2 relating to his status that's available that would show, you  
3 know, why that happened; there's no evaluation related to his  
4 activities or examination as to his suitability for the  
5 project. Again, just suddenly, out of thin air, the chairman  
6 of the board personally becomes involved in this particular  
7 project.

8 I think we also have, you know, related concerns with  
9 respect to the grouping of documents that we've received  
10 related to the 9/11 investigations themselves.

11 THE COURT: Let me stop you before you go there. I  
12 understand that you have also been provided with I think three  
13 employee files for other Saudi employees who are seconded to  
14 Dallah Avco, is that correct?

15 MR. CARTER: I think that's three.

16 THE COURT: And in reviewing those folders, those  
17 files, have you seen the sorts of documents that you're seeking  
18 in the al-Bayoumi file or are there documents sort of equally  
19 missing in those files that you think should be in this file?

20 MR. CARTER: Well, I think what we see in some of the  
21 other employee files is the more traditional recruitment  
22 mechanism through which --

23 THE COURT: I'm not asking about the other files. I'm  
24 asking about the three Saudi secondment files.

25 MR. CARTER: I don't think we see anything remotely



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1 comparable to this kind of involvement of the chairman of the  
2 board of directors, which is essentially what we're really  
3 getting at.

4 THE COURT: So those files don't have sort of  
5 correspondence from senior people at Dallah Avco communicating  
6 with the PCA?

7 MR. CARTER: I don't recall off the top of my head,  
8 your Honor, who was making those communications. I'll have to  
9 check. I can check while --

10 THE COURT: Because I think everybody agrees that  
11 al-Bayoumi's role at Dallah Avco was not the way most employees  
12 were working there, and so to compare his personnel file to  
13 your sort of average employee who's showing up for work and  
14 doing his or her job isn't necessarily an apples-to-apples  
15 comparison. Which is I assume why you asked for some exemplars  
16 of seconded Saudi government employees, which you received.  
17 And so what I'd like to know is, comparing the Bayoumi file to  
18 those, which I think is much more of an apples-to-apples  
19 comparison, are you seeing documents that give you reason to  
20 believe that documents are missing or that the file is somehow  
21 incomplete?

22 MR. CARTER: Well, I mean, I think we do see some  
23 similar categories of documents, payroll information and some  
24 of those things that have been provided for Bayoumi, and I  
25 think we're not especially concerned about those. We're more

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1 concerned, in the context of Bayoumi, with these unusual  
2 circumstances relating to, you know, the fact that he appears  
3 without a résumé ever being submitted, without any inquiry as  
4 to, you know, the appropriateness of his status or anything of  
5 that nature. So it's the unique categories of documents.

6 I think beyond that, with regard to the personnel  
7 files, your Honor, I think the other issue would be that, you  
8 know, as a paymaster, we have quite a bit of payroll  
9 information for Bayoumi. I think it's nearly complete. What  
10 we don't have a complete set of are bank transfer records for  
11 Bayoumi. Now we have a few, mostly in the period of 1996 and  
12 1999, and while the payroll information is obviously relevant  
13 and significant, it's apparent that, you know, Bayoumi was  
14 receiving reimbursement or compensation for activities that  
15 went beyond, you know, the circumstances of his mere  
16 employment. So we don't think the payroll records necessarily  
17 show the entire picture. And so Bayoumi is getting paid by  
18 Dallah Avco. That's their position: We're the paymaster of  
19 this guy. So there had to be bank transfers facilitating those  
20 payments. And so we don't have those. And that's one of the  
21 more significant areas where we have an omission, with regard  
22 to the core Bayoumi documents.

23 THE COURT: Okay.

24 MR. CARTER: I think in addition, your Honor, just  
25 taking a bit of a step back, we remain a bit puzzled by the

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1 nature of the documents that were apparently collected in  
2 response to the investigations post 9/11 of the arrangement  
3 between Dallah Avco and Omar al-Bayoumi. You know, we see  
4 indications that the chairman, Kamel, is extremely, you know,  
5 concerned about these inquiries and initiating efforts to  
6 develop information that would allow them to gather all the  
7 facts and be able to respond. With Dallah Avco, you know, when  
8 we entered into the discovery process, we would have expected,  
9 quite candidly, that Dallah Avco could have reached under a  
10 file folder and pulled out all of the relevant documents  
11 relating to Bayoumi and any associated parties as a result of  
12 due diligence done in response to being directly implicated in  
13 the September 11<sup>th</sup> attacks. And what we see instead is that,  
14 you know, there's a limited number of documents identified on a  
15 privilege log but nothing resembling the comprehensive  
16 portfolio of documents associated with Bayoumi that were  
17 subsequently collected. And so again --

18 THE COURT: Do you know who -- and I wanted to  
19 categorize this instead of 9/11 investigations. Are these FBI  
20 investigations or do you know whether the Saudi government  
21 engaged in an investigation? What investigations are you  
22 interested in?

23 MR. CARTER: So what we know is that the U.S. Consul  
24 in Saudi Arabia approached Dallah Avco and that Dallah Avco had  
25 a meeting with the U.S. Consul with representatives of the U.S.

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1 Treasury Department and representatives of the Department of  
2 Justice. So this was a pretty significant inquiry that  
3 included, you know, an in-person meeting. And meanwhile,  
4 Mr. Kamel's writing to the Presidency of Civil Aviation to  
5 request additional information to allow Dallah Avco to respond  
6 to all of these inquiries and raising concerns about them, and  
7 so we would expect that there would be, among other things --  
8 for instance, your Honor, it strikes us that this is an issue  
9 that would rise to the level of the board of directors of  
10 Dallah Avco and perhaps be reflected in minutes of the meetings  
11 of the board of directors, but we don't have anything of that  
12 nature. And sort of similar to that issue, you know, with  
13 regard to the scope of the search concerning, you know,  
14 Bayoumi's specific records and the personnel records, what we  
15 see in the Yamani declaration is various instances in which  
16 Dallah Avco says: We identified the people who would have  
17 records relating to the ANSS project. And so for instance, we  
18 asked Chairman Kamel about his ANSS project files.

19 THE COURT: In what context? Did you depose him or --

20 MR. CARTER: No, no. I'm sorry. Dallah Avco. And  
21 Dallah Avco's counsel asked him about his project files.

22 THE COURT: Oh.

23 MR. CARTER: But just as an example, we know that he's  
24 personally involved in these time periods in addressing these  
25 issues going back to the original secondment period in 1999

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1 when it comes to his attention that they no longer want him  
2 seconded to Dallah Avco and then with the post investigations.  
3 I have to infer that the chairman of the board of a corporation  
4 of this nature maintains a calendar that itself may reflect  
5 conversations, meetings that occurred during this time period  
6 that would be relevant to this inquiry, that may shed light on  
7 how some of these issues came to his attention. I don't see  
8 any indication that anything of that nature was so. Again, the  
9 records of the board of directors, I think the search has been  
10 circumscribed largely to the ANSS project files. And our  
11 concern, your Honor, at base is really that Dallah Avco has  
12 described what it has done so far, and we don't want to find  
13 ourselves in a situation later where it suddenly comes to light  
14 that there are additional repositories with potentially  
15 responsive information in the possession of the chairman, in  
16 possession of the chairman of the board of directors, in  
17 possession of the human resources department, for example, that  
18 have not yet been searched. And so, you know, our focus is on  
19 ensuring that a search of all relevant repositories has gone on  
20 and not merely a search of the ANSS project files that had  
21 fallen into disarray.

22 THE COURT: Let me ask about the Ercan files, which I  
23 understand Dallah Avco has segregated. They contend that they  
24 have searched those files and produced whatever documents  
25 relate to Mr. Bayoumi, which I think sounds like is really only

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1 the 1994-95 period. What's your position with respect to  
2 Ercan? Do you think there are more documents there? Is there  
3 a targeted search that you think hasn't been conducted that  
4 needs to be done?

5 MR. CARTER: Your Honor, I think Ercan's relevance  
6 goes beyond Bayoumi himself, and that's why we have concerns  
7 about this search having been restricted to Bayoumi only. And  
8 with that, on that point, I think a footnote in the 9/11  
9 Commission's report on this issue is highly probative of the  
10 issue, and this appears at footnote 18 to Chapter 7. It  
11 indicates that the Saudi Civil Aviation Authority employment  
12 records for Bayoumi for March 2000 through January 2002  
13 provided to the 9/11 Commission by the FBI and other materials  
14 indicate that while in San Diego, Bayoumi was officially  
15 employed by Ercan, a subsidiary of a contractor for the Saudi  
16 Civil Aviation Administration, although a fellow employee  
17 described Bayoumi as a ghost employee, noting that he was one  
18 of many Saudis on the payroll who was not required to work.  
19 And so that description, along with other documents, and the  
20 acknowledgments that Dallah Avco has made, indicate that, among  
21 other things, Ercan served as a functionary for making payments  
22 relating to the ANSS project for which Dallah Avco was making  
23 reimbursements to Ercan. Now while documents indicating  
24 payments directly to Bayoumi are certainly probative, there is  
25 a broader question here related to our allegations that this

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1 mechanism, this ANSS project mechanism and Dallah Avco's role  
2 in it, along with those of related parties, was being used to  
3 conceal the true nature of undisclosed Saudi agents here in the  
4 United States. The possibility that there were 50 or so such  
5 employees being paid by Ercan and potentially being reimbursed  
6 by Dallah Avco goes to the heart of whether or not this  
7 mechanism exists and what Dallah Avco knew or should have known  
8 about it. In addition --

9 THE COURT: How does that not go beyond the scope of  
10 jurisdictional discovery that the circuit has authorized?

11 MR. CARTER: I think the scope of discovery, the  
12 inquiry that the Second Circuit authorized was related to the  
13 allegation that Dallah Avco was providing cover employment for  
14 Bayoumi that allowed him and facilitated his presence in the  
15 United States serving as an undisclosed agent of the Saudi  
16 government, performing functions for, among others, the  
17 individuals in the Islamic affairs offices of the embassies and  
18 consulates. Dallah Avco is certainly going to raise as a  
19 defense the notion that, we had no supervisory authority over  
20 Bayoumi, we had no reason to know that there was anything  
21 untoward about him. And if you look squarely at the Bayoumi  
22 records, they support our view on that. If, however, Ercan is  
23 telling them, we have 50 people on this payroll that don't show  
24 up for any work, do you have any understanding of what these  
25 folks are doing, that's directly probative of a problem here

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1 with respect to this relationship. The contention by the Ercan  
2 employees who knew these folks was that this wasn't an isolated  
3 incidence, that Bayoumi was a member of a larger group of  
4 Saudis who were not performing any work but being paid for  
5 being associated with the ANSS project. And so again, that  
6 goes to the heart of sort of the mechanism that we say was in  
7 place to provide this cover employment. I think beyond that,  
8 your Honor, if you --

9 THE COURT: Can I ask -- sorry -- how would you  
10 propose that Dallah Avco search its files in connection with  
11 Ercan for ghost employees, cover employees?

12 MR. CARTER: Well, I think, your Honor, that we don't  
13 know how large these Ercan files are, and so, you know, it may  
14 very well be -- they've indicated already that there would be  
15 no burden associated with producing these documents. They can  
16 make the production, you know, while reserving their objection  
17 on relevance grounds and maintaining their position that the  
18 documents are irrelevant. You know, certainly the documents  
19 reflecting circumstances in which Dallah Avco was being asked  
20 to reimburse Ercan for expenses associated with the ANSS  
21 project, in our view, would be within the scope of reasonable  
22 discovery, given both the direction from the Second Circuit and  
23 what the 9/11 Commission has said about Ercan's role with  
24 regard to Bayoumi and other --

25 THE COURT: What the 9/11 Commission has reported with



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1 respect to --

2 MR. CARTER: Reported. Fair enough, your Honor.

3 THE COURT: They didn't draw any conclusions.

4 MR. CARTER: No. They reported essentially the  
5 content of the FBI documents, but again, they're basing this,  
6 in their citations, to records received from the Civil Aviation  
7 Authority, so they've seen more than we have, because they got  
8 the direct documents from Saudi Civil Aviation.

9 So again, you know, the Ercan documents sort of are at  
10 the heart of this, which I think leads to the Avco  
11 Overseas/Textron documents, which is sort of, you know, as it's  
12 been described to us by Dallah Avco, you know, Avco  
13 Overseas/Textron sits in a similar position to that of Ercan.  
14 It's being used by the Saudi government to facilitate payments  
15 associated with the ANSS project, and Dallah Avco was then  
16 being asked to reimburse Avco Overseas/Textron --

17 THE COURT: Why didn't you ask for documents regarding  
18 Avco Overseas?

19 MR. CARTER: Well, I think Avco Overseas' significance  
20 in this principally came to our attention as a result of the  
21 production by Dallah Avco of documents reflecting a specific  
22 circumstance in which Dallah Avco was being asked to reimburse  
23 Avco Overseas for expenses associated with Bayoumi himself,  
24 and, you know, our view, your Honor, is that when Dallah Avco,  
25 in the context of searching this disorganized mess of a record

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1 collection, came across records relating to another entity  
2 similarly situated to Ercan, which we had already said was  
3 relevant by virtue of its relationship to both Dallah Avco and  
4 Bayoumi, the logical thing to have done would have been to  
5 segregate those records at that time. You already had certain  
6 records relating to Avco Overseas and Textron that showed  
7 direct transfers going effectively from Dallah Avco to Bayoumi.  
8 You know, the broader question of whether or not other aspects  
9 of the Avco Overseas/Textron relationship might be relevant was  
10 best explored once those documents were preserved. And again,  
11 it's hard to tell. From what they've said about the nature of  
12 the records, it may very well be that until they put them in  
13 the state of disarray, the Avco Overseas/Textron documents were  
14 themselves quite neatly organized in some way that would have  
15 rendered them searchable. And the problem is that they're  
16 using their own state of disrepair that they allowed the  
17 records to fall into as a justification for not searching them.  
18 And again, because of the way that the records fell into  
19 disrepair, our view is that as soon as they found records  
20 associated with the related entity that also related directly  
21 to Bayoumi, the records of that entity should have been set  
22 aside. It's not a difficult task.

23 THE COURT: How about then the production of the  
24 documents related to the 1994 reimbursement by Dallah Avco to  
25 Avco Overseas? Are there any other documents or maybe

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1 reference in the 9/11 report that implicate Avco Overseas?

2 MR. CARTER: I think there's a passing reference in  
3 one of the FBI reports but no more. To my recollection, your  
4 Honor, I'm not even sure that there's a reference to Dallah  
5 Avco in the 9/11 report. They just referred to it as a, you  
6 know, Saudi contractor to the government. So, you know, the  
7 9/11 Commission isn't, you know, comprehensive on that point.

8 THE COURT: Okay. Let me ask you about an area that  
9 seems quite broad, and that's requests for all out-of-Kingdom  
10 expenses for the ANSS project. I guess my question for you is  
11 sort of, that seems like a substantial undertaking, to identify  
12 all those documents, receipts and all of that, and it's not  
13 clear to me how closely tethered that is to the jurisdictional  
14 discovery that you're entitled to, and so I'm trying to balance  
15 what I think would be a substantial burden on Dallah Avco with  
16 the likelihood that it will produce meaningful documents that  
17 are geared towards the jurisdictional issues. So can you speak  
18 to that point.

19 MR. CARTER: Your Honor, I think as a starting point,  
20 I should say that when we served the document requests, we  
21 didn't have any reason to really believe that this would be a  
22 very broad request, because the ANSS project related to the air  
23 navigation system in Saudi Arabia, and I think we thought in  
24 all likelihood that Bayoumi and maybe a few others were  
25 discrete cases of people assigned to the project who weren't in

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1 the United States. I think we're gathering from what they've  
2 since said that there are, you know, a broader spectrum of  
3 expenses that go beyond Saudi borders associated with this  
4 project, and that's a fair point. I think we could narrow it  
5 down substantially if we just look at the expenses, for  
6 instance, associated with the U.S. payments that flowed through  
7 Ercan and Avco Overseas.

8 THE COURT: Okay. Is there a time limitation here?

9 MR. CARTER: I think, you know, our time limitation is  
10 really, you know, during the period that Bayoumi was himself  
11 associated with Dallah Avco, which would essentially be from --

12 THE COURT: '94 to 2002?

13 MR. CARTER: That's about it, yes, your Honor.

14 THE COURT: Okay. Anything further you want to  
15 discuss?

16 While you're looking, I'll ask you a question.

17 MR. CARTER: Sure.

18 THE COURT: There's references primarily in the  
19 defendant's or Dallah Avco's responses about having produced  
20 nonprivileged documents, and I'm going to ask Dallah Avco the  
21 same question. I assume there was a privilege log that has  
22 been provided and that, at least right now, those issues are  
23 not sort of ready for litigation?

24 MR. CARTER: They're not, your Honor. The one thing  
25 that, you know, we may need clarification on, we drafted a sort

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1 of omnibus order relating to, you know, privilege logs, and it  
2 does not require every potentially privileged document to be  
3 listed. Documents, for instance, from counsel who were  
4 involved in litigation don't need to be on the privilege log.  
5 So, you know, in the context of Dallah Avco, for example, with  
6 regard to, in particular, the steps taken after 9/11 to  
7 investigate the circumstances surrounding Bayoumi, involvement  
8 with the board of directors, some of those things, I think we  
9 have a question as to whether or not there are privileged  
10 documents of that nature that aren't on the privilege log. But  
11 that would be the one issue.

12 THE COURT: Okay. All right. That's helpful. Thank  
13 you.

14 MR. CARTER: Yes, your Honor.

15 MR. KRY: Thank you, your Honor.

16 THE COURT: Thank you.

17 MR. KRY: So there's a lot I want to respond to there.  
18 But at the beginning, I think it's important to appreciate just  
19 what Dallah Avco was doing in connection with this project. It  
20 was a contractor of a Saudi agency to provide manpower  
21 procurement and payroll processing for projects that the Saudi  
22 Civil Aviation Agency was running. Dallah Avco did not direct  
23 or supervise any of the employees that were attached to that  
24 project; all it did was helped recruit them, in most cases, and  
25 then also processed their payroll.

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1           THE COURT: So let me stop you for one second, because  
2 one of the documents that Mr. Carter seeks is sort of  
3 recruitment type documents, and in his view, al-Bayoumi sort of  
4 appears all of a sudden as an employee without any sort of  
5 underlying or precipitating recruitment documents, and then  
6 sort of next thing you know, the chairman of the board is  
7 talking about him. And so the question is, how is it possible  
8 that this person gets to the highest levels of Dallah Avco and  
9 there are no underlying documents related to his recruitment or  
10 how he came to be sort of brought to the attention of the  
11 chairman?

12           MR. KRY: Right. So in the substantial majority of  
13 cases, Dallah Avco did perform a recruitment function, so what  
14 it would do is, the agency would say, we need people that have  
15 these skills, Dallah Avco would get its manpower people to go  
16 out and get people's résumés from various different countries,  
17 arrange them to be interviewed, and then they would be shipped  
18 off to the project, if the agency decided they want to hire  
19 somebody. That process didn't happen with respect to the very  
20 small number of individuals that were seconded from the agency  
21 itself.

22           THE COURT: Does that mean that the agency said: Hire  
23 this person?

24           MR. KRY: Yes, your Honor.

25           THE COURT: And is there a document that shows PCA

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1 saying to Dallah Avco: Hire al-Bayoumi?

2 MR. KRY: There is not, but this has been a subject of  
3 extensive investigation. Under Saudi law, if the government  
4 agency wants to second somebody to another project, technically  
5 the secondment request has to come from the private contractor.  
6 The government can't initiate that process. So as a matter of  
7 Saudi law formality, that March 1995 request, or April 1995  
8 request had to come from Dallah Avco to the agency, because  
9 that's the way Saudi law requires it to be. The testimony in  
10 this case is going to be that that was done at the request of  
11 the agency. Dallah Avco would never have any reason to request  
12 somebody like Omar al-Bayoumi be put on a project where, at the  
13 end of the day, it's the Saudi agency that's running this  
14 project. They know --

15 THE COURT: I think, though, the plaintiff's problem,  
16 and the documents that they're seeking are the documents that  
17 precede that letter, right?

18 MR. KRY: Right.

19 THE COURT: And so obviously somehow al-Bayoumi's name  
20 was brought to the attention of Dallah Avco.

21 MR. KRY: Sure.

22 THE COURT: And, you know, maybe it's always done by  
23 telephone and so there are no documents. That seems  
24 surprising, but maybe that's your position. But otherwise, you  
25 would think that there would be an email or a memo or some

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1 document that says, this is the guy that we, the Saudi  
2 government, want you to now ask to place on this project, and  
3 then you get the letter. But here, I think the first document  
4 that you're seeing, besides the Ercan reimbursement documents,  
5 the first letter that you're seeing is the letter from Dallah  
6 Avco saying, we want this guy.

7 MR. KRY: Right. And your Honor, first of all,  
8 there's no email being used at this period of time. This is  
9 now 20, 23 years ago. So there's any number of ways in which  
10 that initial request could have been communicated -- phone  
11 call, in an in-person meeting. Again, remember, for purposes  
12 of complying with Saudi law, the request has to formally come  
13 from Dallah Avco. So it's entirely sensible that if somebody  
14 at the PCA wanted Mr. al-Bayoumi put on the project -- and  
15 remember, I mean, he was already connected with the PCA. He  
16 was, as the Kingdom of Saudi Arabia told the Court when that  
17 case was argued last year, he was previously a PCA employee.  
18 So he's somebody already attached to them. And if they want  
19 him attached to the ANSS project, for whatever reason, it's  
20 entirely logical that they might just ask Dallah Avco to do  
21 that in person, in a meeting, you know, or by phone. There's  
22 any number of reasons. Because the formal request has to come  
23 from Dallah Avco to comply with Saudi law. And so there's no  
24 real reason to expect that there would necessarily be a letter  
25 requesting that Dallah Avco send its letter back. There might



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1 be, and that's why we spent just an unbelievable amount of time  
2 trying to see if there was such a document, because of course  
3 that would be very material to our case if we had that letter,  
4 and so we looked for it at length. You know, we spoke to  
5 everyone involved in the process. And I want to add this too.  
6 For Mr. -- the chairman that signed the letter of request, what  
7 the testimony --

8 THE COURT: This is the '95 letter or the '99 letter?

9 MR. KRY: It's the same person so --

10 THE COURT: Okay.

11 MR. KRY: The testimony on that will show that as a  
12 matter of protocol, letters that go to the PCA get signed by  
13 the chairman, but these would all have been prepared by  
14 somebody else, and he typically wouldn't have any substantive  
15 involvement in preparing that request or in the reasons why  
16 that request was prepared as a matter of --

17 THE COURT: Who would be responsible for preparing  
18 that?

19 MR. KRY: Other people involved in the ANSS project  
20 management part of Dallah Avco, but many of them are no longer  
21 with the company, your Honor.

22 So, you know, there was also a suggestion that we  
23 didn't adequately try and find out whether Mr. Kamel, who's the  
24 individual that signed those letters, had other files separate  
25 from the ANSS project, but with Mr. Kamel and with everyone

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1 else, we went to Jeddah -- I mean, I personally went to Jeddah  
2 and spoke with him and asked him whether he had -- without  
3 getting into the details of any privileged communications,  
4 asked him whether, you know, those efforts were undertaken and  
5 whether there were any other files he knew about where  
6 documents relating to Omar al-Bayoumi might be. And so all of  
7 those things were already searched. These were all things that  
8 were done as part of the search protocol.

9 THE COURT: What about documents just generally from,  
10 you know, requests from the Saudi government to second its  
11 employees?

12 MR. KRY: Yes. So the way that we did the search for  
13 that -- and this was at the request of plaintiff's counsel --  
14 is that as part of our search process, one of the things we  
15 retrieved from the warehouse was the set of what are called the  
16 ANSS employee files, and so for each employee, they have a  
17 file, and that's where these documents get put. That's where  
18 this correspondence with the PCA about secondments, if it  
19 exists, gets put.

20 THE COURT: But outside of the ANSS project, is there  
21 a separate file maintained at corporate headquarters for every  
22 time the government directs that one of its employees be  
23 seconded?

24 MR. KRY: Well, I mean, it's a very unusual case, and  
25 so, to put this in perspective, in the ANSS project, there were

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1 about 1400, or a little over 1400 employees connected to that  
2 project. We're aware of, or we were able, after conducting a  
3 diligent search, to identify four cases, al-Bayoumi and three  
4 others, where they were seconded by the government. So these  
5 are very unusual cases, so it's not like there would be a  
6 secondment file sitting there over the course of an eight-year  
7 project, if there's only four instances out of 1400. This is  
8 not going to be a large amount of -- or a recurring issue.

9 THE COURT: Right. But the ANSS project wasn't the  
10 only project that Dallah Avco worked on where the Saudi  
11 government may have asked for its employees to be seconded.

12 MR. KRY: You know --

13 THE COURT: As far as I've heard from everybody, the  
14 fact that he was seconded to the ANSS project is meaningless  
15 because he didn't work on that project, so he could have been  
16 seconded to any project, it sounds like.

17 MR. KRY: Right. Well, I mean, so the PCA -- or  
18 evidently he traveled to the United States to pursue  
19 educational studies.

20 THE COURT: Okay.

21 MR. KRY: The question is, can we investigate every  
22 other project that he --

23 THE COURT: I'm just wondering whether or not there  
24 was a separate file of requests from the Saudi government to  
25 second its employees regardless of which project they were

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1 being asked to be placed in.

2 MR. KRY: Right. So our investigation didn't identify  
3 anything like that. The common correspondence that we  
4 identified was invariably put in -- not invariably, but  
5 everything we've seen indicated that it was put in the employee  
6 files for the specific project. The ANSS project was the one  
7 that Omar al-Bayoumi was attached to, so that's a situation  
8 where you can identify the discrete custodians who worked on  
9 that project. Any effort to go to a sort of completely  
10 different project, like a local data management contract for a  
11 local airport in Saudi Arabia somewhere, and to try to go  
12 through all those employee files, that would be just a  
13 monumental undertaking, and I don't think it would be possible.

14 THE COURT: You said that Mr. Kamel -- am I saying his  
15 name correctly, the chairman?

16 MR. KRY: Yes.

17 THE COURT: That he was not, or anybody in the company  
18 was not using email at the relevant period of time here. Have  
19 you gathered his calendars? He probably had a hard copy  
20 calendar book during the relevant period of time. Have you  
21 looked at that?

22 MR. KRY: So Mr. Kamel did keep a set of documents in  
23 his capacity as chairman. Those were maintained by another  
24 individual there, Mr. Baderaldin, and then when the ANSS  
25 project lapsed at the end of 2005, those were among the

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1 documents that were put back in Dallah City. When the Dallah  
2 City search was conducted, one of the things we located was the  
3 set of Mr. Kamel's documents, and those were among the hard  
4 copy documents that were searched.

5 THE COURT: And were they produced?

6 MR. KRY: Anything related to al-Bayoumi, yes.

7 THE COURT: What if there was a notation in a calendar  
8 entry, you know, two weeks before the letter to the PCA asking  
9 for his secondment, if there was a calendar entry that said,  
10 meeting with PCA minister, or whoever you would be meeting  
11 with?

12 MR. KRY: I'm not aware of a document like that  
13 existing, but I do know those files were retrieved, they were  
14 searched for anything related to al-Bayoumi, whether or not  
15 they expressly referred to al-Bayoumi, and any responsive  
16 documents located as a result of that process were produced.

17 THE COURT: Okay.

18 MR. KRY: Turning back to another issue you mentioned,  
19 and this is the issue of the disarray in the warehouse, because  
20 I think those two are different issues that are being combined  
21 here. When the project ended in 2005, the boxes with the ANSS  
22 files were put in the warehouse, and then over the intervening  
23 I guess 12 years now, you know, it's undeniable that other  
24 affiliated companies within the Dallah Avco group put  
25 additional stuff there and the warehouse fell into a bit of

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1 disarray. But there's no evidence and there's no reason to  
2 think that that disarray in the warehouse somehow meant that  
3 the files themselves became disorganized or lost, because the  
4 files are in boxes, and those boxes had to be dug out, but they  
5 were. Two searches of the warehouse were done. The ANSS boxes  
6 were retrieved. And that was a lot of work because of the  
7 disarray in the warehouse. But there's no reason to think that  
8 once those boxes were taken out, that the files within those  
9 boxes somehow became incomplete or documents got lost. And so  
10 I'm not arguing that the state of disarray in the warehouse is  
11 an excuse for Dallah Avco not having to comply with its  
12 discovery demands. Obviously the litigation has been pending  
13 since then. What creates the undue burden is the fact that the  
14 files within those boxes are very voluminous, and for some of  
15 the things they're asking for, it's very difficult to identify  
16 responsive documents.

17 And I want to turn to the Ercan and Avco Overseas  
18 documents, because those are important.

19 THE COURT: Right. Can you tell me how large the  
20 Ercan file is.

21 MR. KRY: Right. So there's no single Ercan file.  
22 Unlike With Avco Overseas, Ercan was actually in their document  
23 requests, so when we were going through the Dallah City boxes,  
24 and that's like, you know, 2 or 3 million-some pages of hard  
25 copy documents that were gone through manually, because we were

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1 aware that that request was outstanding, we did segregate files  
2 relating to Ercan, whether or not they related to al-Bayoumi.  
3 Our search did not identify any documents that related to Ercan  
4 and al-Bayoumi. There is a reference in one FBI document that  
5 says that -- where an anonymous source who's not even  
6 identified claims that someone at PCA told Ercan to put  
7 al-Bayoumi on Ercan's payroll and said their contract would be  
8 jeopardized if that didn't happen. Our files didn't find  
9 anything, anything whatsoever to do with that. Now Ercan is  
10 another ANSS contract vendor and so there are documents  
11 relating to Ercan that are totally unrelated from Omar  
12 al-Bayoumi. And to give you an example, there's a bunch of  
13 documents where, for example, Ercan supplies a piece of  
14 electronics equipment, a piece of hardware to the ANSS project,  
15 and then the PCA wants to bill that back to the project and so  
16 they say, you know, Dallah Avco, pay Ercan for the expense it  
17 incurred, and then we'll pay you to the ANSS project contract.  
18 So there are a bunch of documents like that, but that has  
19 nothing whatsoever to do with this case. That said, we were  
20 mindful this request was out, so we went through Dallah City,  
21 we set this aside, so we have in total, going through those  
22 3 million pages, we came across about 900 pages of documents  
23 relating to Ercan. That's what Mr. Carter's referring to when  
24 he says it would be no burden to produce those if that's what  
25 the Court orders, and in fact, during the course of this, we

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1 had offered to produce that as part of our larger compromise.

2 The situation With Avco Overseas is different in a  
3 very important way. Their document request, despite the fact  
4 that they have I think 56 different requests covering  
5 everything under the sun, never once requested Avco Overseas,  
6 and that's despite the fact that they knew it was a potentially  
7 relevant entity. And in fact, if you look at Exhibit J,  
8 page 30 of the motion in this case, this is the FBI report. It  
9 says at the end -- there's a redaction, but I think everyone  
10 agrees that at least plaintiffs contend that refers to  
11 Mr. Bayoumi.

12 THE COURT: Where are you? Sorry.

13 MR. KRY: This is page 31 of 32 on the ECF header at  
14 the top, but it's page 30 on the bottom of the document.

15 THE COURT: Yes.

16 MR. KRY: So it says, redacted, "identified" redacted  
17 "as a ghost employee Of Avco Overseas. Estimated that there  
18 were approximately 50 individuals carried on the books and PCA  
19 or Dallah and being paid for doing nothing." So this is not a  
20 company that came out of nowhere. It's just not true that the  
21 first time they found out about this was from our papers. Avco  
22 Overseas was absolutely referenced in the 9/11 report -- I'm  
23 sorry, not the 9/11 report, this FBI document. Had they made  
24 that request, we could have done the same thing for Avco  
25 Overseas that we did with Ercan. We could have set aside the



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1 stuff we came across so that we could resolve it now without  
2 having to redo the entire search. But because they never had  
3 an Avco Overseas document request, we had no reason to do that.  
4 We had no reason to expect that they would want those  
5 documents. The documents we did find for Avco Overseas, and  
6 these are the ones from 1994, where there was a period, a brief  
7 period before Mr. al-Bayoumi was seconded to the ANSS project.  
8 Those documents we came across, and that was the proverbial  
9 needle in the haystack. I mean, that we came up with at the  
10 very end of this manual, laborious review of 2 or 3 million  
11 documents. If we had found that at the beginning of that  
12 review, then maybe we would have said, well, maybe this is  
13 relevant after all and we could have started to set aside  
14 documents relating to it. But this came at the very end, your  
15 Honor.

16 So the result of all this is that there's simply no  
17 way to find documents relating to Avco Overseas unrelated to  
18 al-Bayoumi other than repeating this incredibly laborious,  
19 time-consuming, expensive, resource-intensive process that  
20 Mr. Yamani describes in his declaration.

21 One of the basic requirements for a motion to compel  
22 is that if you're compelling production, it has to be documents  
23 you've actually asked for. They didn't ask for these  
24 documents. We've suffered enormous prejudice as a result of  
25 the fact that they didn't ask for the documents because now the

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1 only way to find them would be to redo a process that's been  
2 incredibly laborious and time-consuming. And so for that  
3 reason, I just think there's a fundamental distinction between  
4 the Ercan documents on the one hand and the Avco Overseas  
5 documents on the other hand, because the Avco Overseas  
6 documents have just this enormous undue burden issue.

7 THE COURT: Okay. I have a couple of targeted  
8 questions for you. The first has to do with the bank wire  
9 transfers or checks. It sounds like there's evidence of I  
10 guess maybe paystubs, some type of payment evidence of Dallah  
11 Avco to al-Bayoumi, but there's not evidence of the actual  
12 transfer of funds.

13 MR. KRY: No, there is. I don't think there's  
14 evidence -- I mean, I believe the complaint was just, it's not  
15 a complete record of everything. But there's certainly plenty  
16 of documents we've produced along those lines reflecting that  
17 those amounts were paid.

18 THE COURT: I thought Mr. Carter said that there was  
19 no bank transfer information.

20 MR. KRY: We produced wire transfer applications,  
21 among other documents. There's plenty of that. Dallah Avco's  
22 function was payroll processing, and so they asked for a  
23 million things that we wouldn't be expected to have. That's  
24 certainly something we would be expected to have, and we've  
25 produced whatever we have. It's definitely not a hundred

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1 percent complete. There are various things missing here or  
2 there. But bear in mind, these are payments that go back to  
3 1995, so that's now 22 years ago, and it's also seven years  
4 before the litigation began, and so there's, you know, there's  
5 no necessary reason to expect that every single document that  
6 existed when it was generated would necessarily be kept for the  
7 seven years until the litigation started, especially when it's  
8 a relatively ministerial and not very important document like a  
9 payroll record. You know, there are plenty of documents that  
10 have been produced that show the entire history of payments  
11 being made, and if for specific payments we don't happen to  
12 have every corresponding paper for, I don't know that it  
13 indicates anything terribly important.

14 THE COURT: Let me also ask you about investigations.

15 MR. KRY: Sure.

16 THE COURT: My reading of your response is that you've  
17 produced any documents that were either provided in the course  
18 of investigations or requests that came in to Dallah Avco as  
19 part of the investigations, insofar as it deals with  
20 Mr. al-Bayoumi.

21 MR. KRY: Right.

22 THE COURT: So I take it from that that you have not  
23 produced the sort of file on various 9/11 investigations. Is  
24 that accurate?

25 MR. KRY: No, we're not aware of any investigations of

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1     Dallah Avco that don't relate to al-Bayoumi, so as far as -- I  
2     mean, to the best of our knowledge, we produced everything  
3     along those lines.

4             THE COURT:   So Mr. Carter was talking about a meeting  
5     with the U.S. Consulate in Saudi Arabia, along with the  
6     Department of Treasury and Justice.

7             MR. KRY:   Yes.

8             THE COURT:   Have you produced all of the documents,  
9     either requests for information or documents that were provided  
10    to those entities in connection with the investigation?

11            MR. KRY:   Yes.   I think there's a little bit of  
12    confusion of what happened.   There was a meeting between U.S.  
13    Consul and the PCA.   Attending that meeting, there was one  
14    person who's technically a PCA employee but also interacts with  
15    Dallah Avco.   Dallah Avco has a bunch of documents that relate  
16    to that meeting because of the fact that this guy was there,  
17    and in summary, what they relate to is that Dallah Avco didn't  
18    agree with some of the way certain things had been  
19    characterized at that meeting, so there was some back-and-forth  
20    communications between the PCA and Dallah Avco about what  
21    transpired at that meeting.   All that information was  
22    definitely searched for and produced, and that was, you know,  
23    certainly within the scope of what we think is an appropriate  
24    production.   So nothing, to our knowledge, has been withheld on  
25    that.

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1           There was a separate question or a separate comment  
2 made when Mr. Carter was speaking, because in addition to that  
3 set of documents, around the time that the press started  
4 speculating about Mr. al-Bayoumi, as Mr. Yamani discusses in  
5 his declaration, there was an internal effort to collect the  
6 documents that Dallah Avco had relating to al-Bayoumi, and  
7 those were put in a file. That file, minus the privileged  
8 documents, was produced to plaintiffs in its entirety a couple  
9 years ago now. That would have been back in September of 2014,  
10 and the months after that. There is a question of whether that  
11 file was ever produced to any of the entities investigating the  
12 9/11 investigation. I didn't see any indication that it was.  
13 I can't exclude the possibility that maybe somebody asked for  
14 it and a copy was given to them, but there's no correspondence  
15 record of that, so, you know, to the best of our knowledge,  
16 there's nothing like that. But, you know, as Mr. Carter  
17 explained, certainly when these allegations began surfacing,  
18 there was an internal effort, certain documents relating to  
19 al-Bayoumi were collected, and the results of that collection  
20 effort were produced to plaintiffs quite some time ago.

21           THE COURT: Okay.

22           MR. KRY: There were a couple other items. So the  
23 request was whether there are relevant differences between the  
24 other secondment files we produced and Mr. al-Bayoumi's  
25 secondment file. First of all, we don't agree that those are

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1 different in any significant way. And our notes indicate that  
2 the secondment letters that are in those files are similar to  
3 the ones in Mr. al-Bayoumi's file too. You know, I will say  
4 that's speaking based on our notes, because if there was any  
5 issue with those secondment files being different, that was  
6 never brought to our attention by plaintiffs. We produced  
7 these other three files about a year ago, and so if they  
8 thought that those files somehow revealed gaps in our  
9 production, it would have made more sense to bring that to our  
10 attention back then so we could go back and see if there was an  
11 issue or not.

12 THE COURT: So your notes don't reflect, for instance,  
13 a requesting letter from the agency asking Dallah Avco to ask  
14 for the secondment.

15 MR. KRY: No. We don't see any indication of that,  
16 your Honor.

17 THE COURT: Okay. When was that meeting with the U.S.  
18 Consul?

19 MR. KRY: Approximately February 2002. Maybe January.

20 THE COURT: Okay. Do you want to talk about the  
21 burden that it would impose, if any, to produce all  
22 out-of-Kingdom expenses? Or maybe I could even limit it to all  
23 US-based expenses for the ANSS project. And Mr. Carter  
24 suggested even narrowing it further to just expenses paid  
25 either to Avco or to Ercan from '94 to 2002.

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1 MR. KRY: Right. So with Ercan, those are the 819  
2 pages we've already set aside, so if the Court concludes those  
3 should be produced, there's no burden entailed in producing  
4 those.

5 For Avco Overseas, I mean, it would be astronomical,  
6 because even as so limited, what we would have to do would be  
7 to go back through those 2 million pages of documents, which  
8 are largely boxes of receipts that may be like chronological,  
9 that may be in some other order, but they're not organized by  
10 geography or let alone necessarily a particular vendor. So,  
11 you know, it would be extremely laborious and it would be  
12 having to redo what we've already done. And again, you know,  
13 the Avco Overseas request was not something that was in their  
14 document requests. They did at some point ask for  
15 out-of-Kingdom expenses, but the universe of out-of-Kingdom  
16 expenses is -- that would be impossible to do, because that  
17 would be completely unrelated projects and unrelated expenses.  
18 I don't even know how you would start going about doing that.  
19 If they had asked us for payments to Avco Overseas at the start  
20 of the case, we'd be in a different situation, because then we  
21 could have done the same thing we did with Ercan, but because  
22 that request wasn't made, that wasn't done. So the answer to  
23 your question is that it would be extremely burdensome. And  
24 anything that requires us to go back through the 2 or 3 million  
25 pages of documents from Dallah City and the similar hard copy

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1 finance files from Dallah Avco Power that had to be manually  
2 searched would just be extremely laborious. The Ercan files  
3 are on a different level because those we already have.

4 THE COURT: Okay. Anything further?

5 MR. KRY: Not right now, unless your Honor has any  
6 further questions.

7 THE COURT: No.

8 MR. KRY: Thank you.

9 THE COURT: Mr. Carter, anything you want to follow up  
10 on?

11 MR. CARTER: Just a few notes, your Honor.

12 You spent some time asking Mr. Kry about whether or  
13 not there were circumstances in which the letter requesting  
14 that a secondment be initiated originated from the Presidency  
15 of Civil Aviation, and that is in fact what we see happen in  
16 1999 when Mr. Kamel writes to the PCA and says: We don't want  
17 to keep Bayoumi on any longer. The mechanism to try and turn  
18 that around is a written correspondence directed to Dallah  
19 Avco, not a phone call, so at least to the extent we have any  
20 records relating to how this formally functions, they indicate  
21 that it was by letter request.

22 With regard to Avco Overseas and Textron, the argument  
23 seems to be that because there's a passing reference in a  
24 highly redacted FBI document to Avco Overseas, a singular  
25 reference, it's all plaintiff's fault for not having



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1 specifically requested records relating to Avco Overseas.  
2 Candidly, I don't know, sitting here, when that particular  
3 version of the FBI document came into our possession. The  
4 document in question has been produced by the FBI in about  
5 three or four different versions, with different redactions.  
6 Something that sort of came to our attention late in the game.  
7 But again, from our perspective, Dallah Avco was on notice that  
8 we were very much interested in any vendors on the ANSS project  
9 that were involved in facilitating payments to Bayoumi or other  
10 similarly situated people by virtue of the request for Ercan.  
11 In the course of going through documents, they themselves  
12 discovered the documents indicating that Dallah Avco, or Avco  
13 Overseas, was involved in facilitating such payments, and at  
14 that point they were on notice that these were potentially  
15 probative and relevant documents that should have been set  
16 aside. So I don't think it's appropriate for them to cast all  
17 of the blame with regard to this on the plaintiffs. They had  
18 their own independent notice that these were potentially  
19 relevant but chose to proceed without setting them aside and  
20 look only for documents that referenced Omar al-Bayoumi  
21 specifically. So that's an area of concern.

22           There was a mention by Mr. Kry that efforts were  
23 undertaken, once the inquiries into 9/11 started coming to  
24 Dallah Avco, to collect the records associated with Bayoumi and  
25 that those were made part of this 9/11 investigation file, for

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1 lack of a better term. That was produced very early on. I  
2 think what strikes as a bit odd with respect to that framing is  
3 that we've been told that at least until they were sent to the  
4 warehouse in 2005, the ANSS projects were very well ordered and  
5 within the very well-ordered set of ANSS projects was an  
6 employee file for Omar al-Bayoumi that could simply be pulled  
7 off the shelf, but yet the collection of documents we got  
8 associated with the assembly of materials relating to Bayoumi  
9 from that period when the inquiries came in doesn't include  
10 many of the documents in the employee file. So there's just a  
11 bit of a disconnect as to exactly what happened post9/11 and  
12 whether or not we have the comprehensive file that was  
13 collected at that time as a result of Dallah Avco's instruction  
14 for there to be an inquiry into Bayoumi's status.

15 Again, I think your Honor touched on a few issues that  
16 are areas of concern for us, and I suppose the record is clear  
17 at this point. You know, we do have this question as to  
18 whether or not calendars, for instance, for Mr. Kamel around  
19 that time may have, you know, a reference to a meeting that  
20 someone reviewing the files would not immediately recognize as  
21 being associated with Bayoumi but on further reflection and  
22 analysis would potentially relate to Bayoumi but simply not  
23 reference his name specifically. We're also, you know, again  
24 concerned about whether or not there might be, you know,  
25 distinct sort of PCA files separate and apart from any

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1 particular project file where things might have been filed  
2 independent of the ANSS project. If the confirmation is that  
3 none of those exist, we'll take that representation.

4 THE COURT: Okay. Thank you.

5 MR. KRY: May I just speak briefly to the Avco  
6 Overseas point. I want to be clear. When I spoke about the  
7 fact that they knew about Avco Overseas, I'm not trying to cast  
8 blame on plaintiff's counsel or suggest that should be held  
9 against them. But I do think, when we're talking about  
10 something that is at best a very tangentially relevant set of  
11 documents which are Avco Overseas documents not relating to  
12 al-Bayoumi, because we looked for and produced the Avco  
13 Overseas documents that do relate to al-Bayoumi -- that's the  
14 1994 documents relating to his education -- but if the question  
15 is whether we should have to search the ones that don't relate  
16 to al-Bayoumi, which is at best an extremely tangentially  
17 relevant set of documents, then in assessing the enormous  
18 burdens that would be imposed on Dallah Avco from having to  
19 redo a manual search of millions of pages of documents to  
20 locate those, I do think it's fair for the Court to take into  
21 consideration that we never had notice of that from their  
22 document requests; we never had notice of that from our own  
23 records because, as I mentioned before, we didn't find those  
24 1994 records until the very end of going through those  
25 2 million pages. So I think those are all relevant

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1 considerations in terms of the burden that that would impose on  
2 us.

3 Thank you, your Honor.

4 THE COURT: Thank you.

5 Thank you, everybody, for your arguments and for your  
6 briefs. They were well written and helpful.

7 So I'm sensitive to what I think is a relatively  
8 narrow scope of discovery that the plaintiffs are entitled to  
9 in light of the circuit's ruling, and I also find that Dallah  
10 Avco has undertaken an appropriate and reasonable effort to  
11 uncover these documents. I thought the Yamani declaration was  
12 very clear and indicated that the company had taken its  
13 obligation seriously. It obviously invested a lot of time and  
14 money in the issue. And I think that it has conducted itself  
15 appropriately. So I'm satisfied that the efforts that have  
16 been undertaken have been legitimate.

17 I'm going to grant the plaintiff's motion in part and  
18 otherwise deny it. I am going to direct that the Ercan  
19 documents be produced. It seems to me that they are easily  
20 available. I don't know how much relevance they're going to  
21 provide, but I think that they are segregated and can be easily  
22 produced.

23 But I'm not going to require Dallah Avco to go back to  
24 the well to search for the Avco Overseas documents that are  
25 unrelated to al-Bayoumi. I don't think there's been a

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1 legitimate showing that that's an appropriate burden to impose  
2 upon Dallah Avco.

3 I am going to direct that Dallah Avco go back to its  
4 ANSS files and/or to Mr. Kamel's files. I want calendar  
5 entries to be produced for the period surrounding the 1995  
6 decision to second Mr. al-Bayoumi and then the 1999 decision  
7 both to deny his extension and then to grant the request that  
8 he stay on. So I think calendar entries should be provided for  
9 Mr. Kamel let's say for four months prior to those letters  
10 going out.

11 But also, I want you to search for calendars of the  
12 appropriate ANSS project managers. You represented that it's  
13 unlikely that Mr. Kamel himself actually drafted that letter on  
14 his own. That was done probably through the ANSS organization.  
15 And so I want whoever would have been the appropriate project  
16 managers at those relevant times, 1995 and 1999, to search for  
17 those people's calendars and to produce those calendars  
18 regardless of whether there's a specific reference to  
19 al-Bayoumi.

20 With respect to the investigations, it's not clear  
21 whether this has been produced already. I feel like I've  
22 gotten sort of mixed information. But I want in its entirety  
23 all of the documents related to the early 2002 meeting with the  
24 U.S. Consul, any requests in advance of those meetings, any  
25 documents that were provided in connection to those meetings,

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1 any notes that are nonprivileged that Dallah Avco has of those  
2 meetings, and, to the extent that Dallah Avco was  
3 investigated -- and I use that word in the informal way, which  
4 is to say even if there wasn't a full-blown FBI open  
5 investigation but there was some inquiry related to 9/11 -- all  
6 of those documents need to be produced, regardless of whether  
7 al-Bayoumi himself was referenced in connection with those  
8 investigations. So any 9/11 inquiry or investigation, those  
9 documents should be produced.

10 MR. KRY: And your Honor, all those documents have  
11 been produced.

12 THE COURT: Okay. I also want, if it hasn't been  
13 produced, any board minutes around the time of those  
14 investigations, so to the extent that the chairman was  
15 reporting back to Dallah Avco about those investigations and  
16 the information that was sought and information that was  
17 provided, I want that information to be produced.

18 With respect to the out-of-Kingdom expense request,  
19 you're going to get those documents in the Ercan production, so  
20 you'll be able to review that, but as I said earlier, I'm not  
21 going to require a separate review of documents for Avco. You  
22 have already received the documents related to the 1994  
23 reimbursement.

24 I know counsel said that he's produced all of the bank  
25 transfer or wire transfer information, but I want to make sure

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1 you just go back and speak with your client to confirm that any  
2 documents reflecting wire transfers have been produced. And I  
3 also want you to go back to look at the documents related to  
4 the ANSS project, with a particular focus on the 1995 period,  
5 about documents from the PCA or anyone from the Saudi  
6 government saying, we have someone we want you to second. It  
7 may be that that document does not specifically request that  
8 the person be al-Bayoumi, but there may be documents in advance  
9 of the date when the letter actually went out requesting the  
10 secondment that reflect that the Saudi government had somebody  
11 in mind, even if his name is not identified.

12 MR. KRY: I can speak to that, that we already  
13 searched for those documents when we were looking for the other  
14 employees seconded we spoke about earlier.

15 THE COURT: It sounds to me like in many of your  
16 documents, it was always qualified that it was regarding  
17 al-Bayoumi, so what I want to make sure is, it's possible that  
18 there's a letter from the PCA that says: We have a guy and we  
19 want you to second him. We'll talk with you later with more  
20 information.

21 MR. KRY: I understand. On this particular issue, the  
22 search was not limited to al-Bayoumi.

23 THE COURT: Okay. Okay. In all other respects, I'm  
24 going to deny the motion to compel. Again, I think that Dallah  
25 Avco has done a fair job in producing responsive documents.

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1 Yes, Mr. Carter.

2 MR. CARTER: Your Honor, just one or two areas of  
3 clarification, and this is due to an omission on my part. With  
4 regard to the bank transfers that you've directed Dallah Avco  
5 to provide, as I understand it from Mr. Kry's presentation,  
6 Dallah Avco looked within its own records and produced their  
7 bank transfer records that it had in its possession, but of  
8 course Dallah Avco's bank records resident with its bank are  
9 Dallah Avco's records, so what we'd ask -- and this has been a  
10 direction that's been issued previously in the litigation -- is  
11 that Dallah Avco go to the banks that were providing it banking  
12 services at the time and ensure that they have a complete set  
13 of the records relating to transfers for Bayoumi.

14 MR. KRY: Your Honor, this request is coming out of  
15 nowhere. You know, I would like to discuss this with my  
16 client, because I don't know what burdens are involved in that.  
17 I don't even know if those banks still exist or what would be  
18 there. This has been pending a year. I don't know why I'm  
19 hearing it for the first time after your Honor has given her  
20 ruling.

21 THE COURT: Okay. What I want is for as complete as  
22 possible a production of payments that were made to al-Bayoumi,  
23 and to the extent it's an incomplete record and there may be  
24 records that are from the banks and -- why don't you speak with  
25 Mr. Carter, speak with your client, and see whether or not



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1 those documents can be readily obtained, but I am interested in  
2 the production of all wire transfers.

3 MR. KRY: I understand. With respect to the documents  
4 on the Dallah Avco side, that is definitely something that's  
5 already been searched for and produced.

6 THE COURT: Okay. So you and Mr. Carter can talk  
7 about whether there's additional documents that a bank might be  
8 able to produce.

9 MR. KRY: We're happy to discuss that with Mr. Carter.

10 MR. CARTER: Just really quickly on that point, the  
11 request obviously sought documents in the care, custody, or  
12 control of Dallah Avco, and again, this is territory that was  
13 addressed many times in this litigation. Documents resident  
14 with your bank, that are your records, are within your care,  
15 custody, and control. So --

16 THE COURT: Okay. I think they're going to look into  
17 this.

18 Let me ask a question, just so I can think about the  
19 future. Once jurisdictional discovery is completed, I guess  
20 one question is, when will that happen. Is there any schedule  
21 in place? I know we're going to meet in a couple of weeks to  
22 sort of pull the lens back a little bit on this case, but is  
23 there a deadline for when this phase of discovery is going to  
24 be completed? And then I presume what's anticipated is that  
25 the plaintiffs will file an amended complaint identifying the

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1 information that they think better supports their  
2 jurisdictional basis.

3 MR. CARTER: Your Honor, the way it's been structured  
4 thus far is that there was a preference to have all of the  
5 document productions complete and then move on to a deposition  
6 phase. And there was a reluctance on the part of parties on  
7 both sides to start taking depositions when document  
8 productions were ongoing, given the potential that, you know,  
9 witnesses would have to be redeposed, and so the order that was  
10 in place was for there to be a deadline for completion of all  
11 document productions, which has been extended a few times, most  
12 recently at the request of the defendants, but I think your  
13 Honor contemplated that the document productions should be  
14 complete by either end of March or sometime in April. I  
15 don't --

16 THE COURT: So I've ruled on this.

17 MR. CARTER: You did, and at the hearing in October  
18 you gave us a deadline and said, let's come in at that time and  
19 talk about a deadline for any remaining motions to compel  
20 related to those productions and then to set a table for taking  
21 the necessary depositions.

22 THE COURT: Sounds imminently reasonable. So I'll  
23 just expect a letter from you all around that time.

24 MR. CARTER: Certainly, your Honor.

25 THE COURT: Anything further for us?

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1 Great. Well, I will see you all again I think in a  
2 few weeks. Take care.

3 ALL COUNSEL: Thank you, your Honor.

4 THE DEPUTY CLERK: All rise.

5 (Adjourned)